

respects without giving rise to any unreasonable impediments to the exercise of the access rights of others. Indeed, under California law, a utility may not sell, lease, or encumber property "necessary" to the performance of its duties to the public without CPUC approval whether or not another party desires to use it.²⁴ Although there is no such prohibition on the sale or encumbrance of "unnecessary" or surplus property, there are notice requirements for major transactions.

A utility owner must prudently plan its business and invest in the construction of facilities for its own future use to satisfy its forecasted needs and fulfill its obligations to serve the public. The mere fact that the utility plans accordingly, and thereby reserves for itself space that others cannot access, is not an unlawful discrimination. It is entirely reasonable for entities to reserve space on poles and conduits they construct to meet future business requirements. So long as the reservation period is reasonable and the future needs are based upon forecasting methods consistent with sound business practices, as is the case in California and Nevada, structure owners should not be forced to provide access to such a reserved capacity when no other capacity exists.

A CLC may, of course, construct its own poles and conduits just like the incumbent. Under California law, a CLC has access to necessary public rights-of-way

²⁴ Cal. Pub. Util. Code Section 851 (West 1975).

for construction purposes and may have the right to use Pacific Bell's easements, as discussed below. Should it prove necessary, the FCC could take action under Section 257 to remove any impediments in other states.

PTG does, however, fully support prohibiting structure owners from discriminating against competing providers vis-a-vis their own affiliated entities. The Commission should, therefore, conclude that uniform treatment of affiliates and nonaffiliates is sufficient to comply with the nondiscriminatory access requirement.

Modification of Facilities. The Commission poses a number of questions regarding modifications to facilities, including: (1) whether to establish rules regarding notice of modifications; (2) whether to issue requirements to determine the "proportionate share" of costs to be borne by each entity; and (3) whether to impose limitations on an owner's right to modify a facility and collect a proportionate share of the costs. (*Notice*, para. 225)

The Commission need not establish detailed rules to govern the modification or alteration of structures. Instead, the FCC should permit the parties themselves to agree upon notice requirements and resolve pricing issues. PTG has done just that and developed its own set of detailed policies for modifications to its poles, ducts, or conduits. Typically, PTG provides attaching entities with at least thirty days prior

notice before altering its structures. This standard thirty-day period has traditionally been satisfactory.

In addition to establishing a time frame for providing notice of modifications, PTG has also established reasonable pricing and reimbursement policies. For example, when PTG performs work to facilitate an applicant's request for space on a conduit, the applicant is charged based on standard billing practices. However, if the modification is for the benefit or convenience of PTG, it bears the entire cost of the alteration. The FCC should recognize that the approach taken in California and Nevada is reasonable and constitutes a "safe harbor" result satisfactory under the Act.

Other Issues. Certain types of access present unique issues of which the FCC should be aware. For example, PTG cooperates with entities needing to utilize building entrance facilities. But, such access is complicated because the private building owners also possess property rights that may affect third-party use. It follows that resolving issues of access to building entrance facilities should be left to private or state policies. Indeed, PTG already negotiates with parties seeking access to building entrance facilities.

Rights-of-ways likewise raise complex issues. A right-of-way may generally be defined as the right to use the property of another and typically consists of two types:

(1) public rights-of-way (streets, roads, public utility easements); and (2) private rights-of-way (easements, licenses). Public easements or rights-of-way utilized by PTG may also be used by other licensees.²⁵ However, in the case of a private right-of-way, Pacific may lack the legal authority to offer access to third-parties.²⁶ Any FCC guidelines should make clear that no party can be compelled to give that which the law does not permit.

There is one important thing that the FCC can include in its general access guidelines to facilitate the development of local competition. PTG urges the Commission to ensure that other local carriers also are required to provide reciprocal access. In other words, CLCs should be required to provide the same access to incumbent LECs as these LECs are required to provide to the CLCs. For example, AT&T has substantial accessible capacity of its own. There is no valid reason to exclude AT&T and others similarly situated from this requirement. The failure to provide reciprocal access should constitute discrimination in violation of the Act.

²⁵ See Cal. Pub. Util. Code Section 7901 (West 1994).

²⁶ Communications providers, such as cable television companies, have the right to use PTG's easements. See *Salvary v. Falcon Cable Television*, 165 Cal. App. 3d 798, 212 Cal. Rptr. 31 (1985). But, it is unclear whether this decision extends to all private rights-of-way and whether it applies notwithstanding potential overburdening of the easement and associated facilities.

In sum, California and Nevada have implemented an equitable and reasonable policy for allocating capacity and permitting access. These state approaches are consistent with the Act and have been successful in encouraging parties to reach mutually-acceptable agreements. Consequently, the Commission should here again specify that the approaches taken in California and Nevada are "safe harbors" that fulfill the requirements of the Act.

V. PTG SUPPORTS THE FCC'S NUMBER ADMINISTRATION GUIDELINES AND URGES THE FCC TO ACT PROMPTLY TO COMPLETE THE PROCESS (*Notice*, para. 250-259)

Section 251(e)(1) imposes upon the Commission the duty to "create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis."²⁷ PTG supports the Commission's tentative conclusion that the *NANP Order*²⁸ satisfies the Commission's obligation to designate an impartial administrator. (*Notice*, para. 252) PTG further urges the Commission to complete promptly the tasks articulated in that decision.

²⁷ Section 251(e)(1).

²⁸ See *Administration of the North American Numbering Plan*, CC Docket No. 90-237, *Report and Order*, FCC 95-283 (released July 13, 1995) ("*NANP Order*") (*recon. pending*).

Notably, the states are already charged with the task of implementing the FCC's numbering principles to ensure that numbering resources are available on an efficient and timely basis and that no industry segment or technology is favored over another. There is no reason to change that allocation of responsibility at this time. Thus, additional FCC rules to address these issue are unnecessary.

With respect to Pacific Bell, PTG has proposed a partial transfer of central office code administration to the CPUC or a third party. In the alternative, it has been suggested that the CPUC serve as the interim central office code administrator until the North American Numbering Council ("NANC") completes its work, or until the CPUC selects a permanent administrator. These options are consistent with the Commission's proposal to permit the LECs, along with Bellcore and the states, to continue performing each of their respective functions related to number administration until such time as the functions are transferred to the new entity. (*Notice*, para. 258) PTG does not object to continuing the *status quo*. Allowing these entities to continue performing their administrative tasks is an efficient interim solution.

The Act requires all telecommunications carriers to bear the cost of establishing a numbering administration.²⁹ In its *NANP Order*, the FCC: (1) directed that the

²⁹ Section 251(e)(2).

costs of the new numbering administration be recovered through contributions by all communications providers; (2) concluded that the gross revenues of each communications provider should be used to compute each provider's contribution to the new numbering administration; and (3) ordered the NANC to address the details concerning recovery of the administrator's costs.³⁰

PTG fully supports the development of a reasonable funding mechanism that includes all parties that directly and indirectly benefit from numbering resources. Equity requires a competitively neutral formula that does not place an unfair burden on incumbents or new entrants. Thus, whatever revenues are excluded for one group of entities should also be excluded for other groups. Consistency in assessing and collecting charges is essential to efficient and fair administration.

³⁰ *NANP Order*, para. 94, 99.

VI. CONCLUSION

PTG strongly supports the Act's goal to promote competition in the telecommunications industry. Consistent with the deregulatory environment envisioned by Congress, the Commission should refrain from mandating uniform, rigid federal standards that would unnecessarily constrain the states and carriers in implementing that policy. A more effective approach in accordance with the Act is for the FCC to establish general guidelines and identify "safe harbors" on which parties can rely when negotiating agreements to ensure compliance with the Act. Accordingly, the Commission should approve the "safe harbors" described above for satisfaction of the Act's network information disclosure, dialing parity, pole, conduit and rights-of-way access, and numbering administration requirements.

Respectfully submitted,

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May 20, 1996

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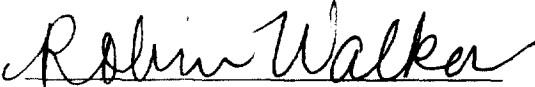
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